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In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-416.

WILLIAM R. STOUT,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

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OBJECTION TO JURISDICTION.

Petitioner asks this Court to hold that Governors' hearings must be held in all renditicn proceedings and that the requirement that the burden is on the fugitive to disprove the facts set forth in the Governor's warrant violates the fugitive's right under the Fifth Amendment to remain silent.

These issues have consistently been determined adversely to petitioner. We see no merit in the arguments made by petitioner to warrant this Court assuming jurisdiction.

ARGUMENT.

Question I.

Here petitioner admits that hearings by a Governor prior to the issuance of an extradition warrant are held at the discretion of the Governor but argues that simply because hearings are held in some cases hearings *must* be held in all cases.

The Ohio courts will not interfere with the Governor's exercise of his discretionary power. In *State ex rel. Corbett v. Common Pleas Court* (1959), 168 O.S. 468, 155 N.E.2d 923, the Supreme Court of Ohio said at page 469:

> "The matter of issuing an extradition requisition by the Governor of Ohio is an executive function, discretionary with him, and the exercise thereof will not be interfered with by the courts."

Petitioner argues that the failure to grant a hearing is a denial of due process of law.

The general rule is stated in 31 AM. JUR. 2d, *Extradition,* Par. 50 pg. 957:

> "*Requirements as to hearing and notice.*
>
> Since extradition proceedings are summary in character and not subject to the general rules governing judicial procedure, a warrant of extradition may be issued without notice to the person charged, and without a hearing before the governor. Although the latter, in his discretion, may grant the accused a hearing, *a refusal to do so is not a violation of the right of the accused to due process of law.* It is said that to hold otherwise would often render entirely useless the constitutional provision authorizing the extradition of fugitives, and the statute passed to effectuate the provision. Moreover, where a hearing is granted, it may be conducted in any manner satisfactory to the governor, and the accused is not entitled to be represented by counsel." (Emphasis supplied.)

Due process of law is provided by the right of the fugitive to test the legality of his arrest under the Governor's warrant by applying for a writ of habeas corpus. Ohio has adopted the Uniform Extradition Act and grants this right in Section 2963.09, Ohio Revised Code.

We submit that this Court ought not intervene in a matter which has always been held to be within the discretionary powers of a governor and require the governors of the 50 states to hold hearings on *all* rendition requests.

Question II.

Here petitioner concedes that the Governor's warrant, in the habeas corpus proceedings, is prima facie evidence of all the facts that are recited therein. He argues that the law which so holds violates his Fifth Amendment right by requiring him to become a witness if he desires to contest any of the facts set forth in the extradition warrant.

Extradition proceedings stem from Art. IV, Sec. 2 of the United States Constitution and Title 18, U.S.C.A. Par. 3182. Note that the Constitution requires that the fugitive "shall on demand" be removed to the demanding state. The statute requires that the executive authority of the rendition state "shall cause him to be arrested." The Ohio statute, Sec. 2963.02, Ohio Revised Code, requires that the governor "shall have arrested and delivered—any person. . . charged with. . . felony. . ."

The proceedings before the executive authority are summary in nature and, providing that the demanding state has complied with the statutory requirements, are mandatory. Such proceedings can be attacked only by the filing of a petition for a writ of habeas corpus.

We find no case which discusses the question of whether proceedings before a governor are civil or criminal in nature. However, in view of the fact that a fugi-

tive is not entitled, as a matter of right, to a hearing, we suggest that it cannot be said that such proceedings can be said to have any of the aspects of a criminal trial.

As petitioner concedes, proceedings in habeas corpus are civil in nature.

We find no case which discusses, in extradition matters, the case of *Griffin v. California,* 380 U.S. 609. However, in *U. S. ex rel. Vitello v. Flood* (1967 CA 2), 374 F.2d 554, the court considered the question of whether admissions allegedly obtained in violation of the rules of *Miranda v. Arizona,* 384 U.S. 435 were admissible in extradition habeas corpus proceedings. The court cited *South Carolina v. Bailey* (1933), 289 U.S. 412 and said at page 557:

> "We conclude, however, that Miranda does not apply to rendition proceedings or hearings on petitions for habeas corpus which are incident thereto. Interstate rendition proceedings are summary in nature and the accused is not entitled to all of the procedural protections of a criminal trial."

The court further said at page 558:

> "There is no sound reason to import *into civil proceedings of this kind* principals analagous to those enunciated in *Miranda v. State of Arizona,* supra, for criminal proceedings." (Emphasis added.)

As this Court said in *Sweeney v. Woodall* (1952), 344 U.S. 86, 97 L. Ed. 114 at page 118 (L. Ed.):

> "The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the constitution contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; . . ."

The purpose of extradition proceedings would be defeated if the executive authority of all rendition states is required to hold a hearing prior to the issuance of the extradition warrant and if the demanding state is required to appear and offer proof of the facts set forth in the rendition request.

CONCLUSION.

The present state of the law is (a) that the executive authority of a rendition state is not required to hold a hearing prior to the issuance of an extradition warrant and (b) that habeas corpus proceedings are civil in nature and that due process of law is provided by such proceedings and (c) that rights under the Fifth Amendment are not impaired by holding that the Governor's warrant is prima facie evidence of all the facts recited therein.

We submit that the proceedings in the courts of Ohio were correct in all respects and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX.

UNITED STATES CONSTITUTION, ART. IV, SEC. 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

UNITED STATES CODE, TITLE 18, SEC. 3182.

§ 3182. Fugitives from State or Territory to State, District or Territory.

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

OHIO REVISED CODE, SEC. 2963.02.

2963.02. Governor to deliver fugitives from justice.

Subject to sections 2963.01 to 2963.27, inclusive, of the Revised Code, the constitution of the United States and all acts of congress enacted in pursuance thereof, the governor shall have arrested and delivered to the executive authority of any other state of the United States, any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.